

CHAPTER – 15

ROLE AND FUNCTIONS OF THE PRESENTING OFFICER

1. What is the basic responsibility of the Presenting Officer (PO)?

Presenting Officer is appointed for the purpose of presenting the case of the Disciplinary Authority so that the charges can be proved in the Inquiry. In many ways, the role of the presenting Officer is a challenging one. His role is comparable to that of the anchor runner in a relay race. Many people have carried the baton and finally it has been handed over to him. Whatever be the merits and demerits of the earlier functionaries, being the last person in the line, it is for the Presenting Officer to carry the baton to the winning post. An intelligent Presenting Officer can make up for the mistakes committed by the earlier functionaries and accomplish the target. Similarly, a bad Presenting officer may lose the advantage acquired by the Investigating officer, Vigilance Officer, etc. and may lose the case through bad presentation.

2. What are the various activities performed by the PO for the discharge of the above function?

For achieving his objective, the Presenting Officer is required to perform several functions. Basically, the Presenting Officer is required to lead the evidence of the Disciplinary Authority and satisfactorily answer the contentions raised by the Charged Officer. Thus, the explicit functions of the Presenting Officer are:

- a. Presenting the documentary evidence
- b. Leading the oral evidence on behalf of the disciplinary authority
- c. Cross examining the defence witness
- d. Preparation and presentation of the written brief

Successful accomplishment of these explicit functions, call for a number of implicit functions as well. Some of the actions such as liaison with the Disciplinary Authority has to be performed by the Presenting Officer throughout the course of his assignment. Notwithstanding this, various actions to be taken by the Presenting Officer in the course of his assignment can be conveniently categorised into the following four phases. :

- Preparatory stage
- Preliminary Hearing stage
- Regular Hearing stage
- Post hearing stage

3. What are the activities performed by the PO during the preparatory stage?

Following are the activities performed by the Presenting Officer during the preparatory stage:

Examine Appointment order and the documents received along with it:

- a) Establishing rapport with the Inquiry Officer
- b) Understanding the charge
- c) Analysing the charge
- d) Link the facts to evidence
- e) Anticipate possible line of defence: At the preparatory stage, the Presenting Officer should also anticipate the line of defence, the Charged Officer will be taking.
- f) Visualise the transaction

4. What documents are to be received by the PO along with the appointment order?

- a) PO receives the following documents along with the Appointment Order:
- b) Charge Sheet along with the enclosures.
- c) Written Statement of defence submitted by the charged officer.
- d) In case the Charged Officer has not filed any Statement of Defence, a confirmation to the above effect and a confirmation to the effect that the Charge Sheet has been served on the Charged Officer.
- e) A copy of the order of appointment in respect of the Inquiry Officer.

5. Will it be fair and appropriate for the PO to meet the IO unless called for a hearing?

Presenting Officer is the agent of the Disciplinary Authority and his endeavour is to prove the charge. On the other hand the Inquiry Officer is an impartial authority who is required to decide the case on the basis of the evidence led before him. Notwithstanding this position, the Presenting Officer should consider himself as one assisting the Inquiry Officer in ascertaining the truth. Often it is said that the relationship between the Disciplinary Authority and the Presenting Officer is similar to that between the client and an advocate. Presenting Officer is compared to the Government Counsel. Every counsel is an officer of the court and owes a responsibility towards the court in helping the court to ascertain the truth. On the same analogy, the Presenting Officer should consider himself as an officer under the Inquiry Officer assisting the latter to ascertain the truth. Immediately on receipt of the appointment order, the Presenting Officer should get in touch with the Inquiry Officer

and assure him of his co-operation. It is also desirable that the Presenting Officer informs the Inquiry Officer of his address and phone number to facilitate easy communication.

Needless to add, it will be unethical for a PO to influence the IO regarding the hearing and its outcome.

6. What is the need for the PO to understand the charge immediately on receipt of the appointment order?

Presenting Officer can present the case effectively only if he understands the case of the Disciplinary Authority thoroughly. The first step in this regard calls for the understanding of the charge. Often the charge is that a person has done something which should not have been done or has failed to do something which should have been done. That someone has used abusive language, (which should not have been done) is a charge. That a person has failed to keep the cash book up to date, (failed to do something, which should have been done) can be a charge. While charges like unauthorised absence, insubordination, etc. can easily be understood, there may be situations wherein the omission or commission of the Charged Officer may not be easily understandable. The clue for understanding the charge is asking the following questions:

- What has the Charged Officer done or failed to do?
- What was required to be done or not to have been done?
- Which rule or instruction prescribes what is required to be done or not to be done?

7. How does the PO analyse the Charge?

The PO has to perceive the Charge – Fact – Evidence co-relation in the Charge Sheet. For example, if there is a charge that an officer (working in a stores department) has procured certain items without any demand for the same from the sub-depots and thereby violated certain departmental instructions, the charge involves the following facts:

- That there are some instructions relating to the manner of procurement of items.
- That the instructions require that the items can be procured only after the receipt of the demands from the sub-depots.
- That the officer purchased the specified items.
- That there was no demand from any sub-depot for these items.

8. How should the PO link evidence to charge?

Every fact that is required for establishing the charge must be presented through some evidence. Presenting Officer must locate evidence at his disposal for establishing various facts. This can be done by listing out the facts to be proved in the inquiry and examining which piece of evidence (in Annexure III and IV) will help in establishing the fact. The officer who has carried out the Preliminary Investigation can be of great help in this regard because he has already reached certain conclusions on the basis of the evidence gathered by him during the investigation stage.

9. What is the sphere of activities during the Preliminary Hearing Stage, with which PO is concerned?

- ✓ Collection of original documents
- ✓ Finalising the schedule for the Inspection of the listed documents
- ✓ Conducting the inspection of the listed documents
- ✓ Additional documents required by the Charged Officer
- ✓ Collection of the documents cited by the Charged Officer
- ✓ Handing over the listed documents to the Inquiry Officer after the inspection
- ✓ Obtaining the copies of the documents required by the Charged Officer

10. Wherefrom and when does the PO collect the original documents?

Originals of the documents listed in Annexure III of the charge sheet are generally held by the Disciplinary Authority. Normally they are retained by the Vigilance Section or the Administrative section which has processed the case for issue of Charge Sheet. The same will have to be obtained by the Presenting Officer and kept in safe custody till it is got inspected by the Charged Officer and finally presented to the Inquiry Officer. Depending upon the nature of the documents and convenience of the parties, these documents may be taken over by the Presenting Officer at an appropriate time. At any rate, the documents must be with the Presenting Officer before the inspection of the same by the Charged Officer. It is advisable for the Presenting Officer to critically examine the originals of the listed documents so that the disputes which the Charged Officer is likely to raise may be anticipated and proper remedial action can be planned.

11. When does the inspection of documents take place?

It is during the Preliminary Hearing, that a decision is taken for the Inspection of the Documents. As per Rule 14(II)(i), inspection of the documents is required to be done "within 5 days of the order or within such further time not exceeding five days as the Inquiring authority may allow". The Presenting Officer will have to indicate to the Inquiry Officer, his preference for the venue, date and time of the inspection of the listed documents. Depending upon the mutual convenience of the parties, the Inquiry Officer will fix the schedule for the inspection of the listed documents.

12. What precautions are to be observed by the PO during inspection of documents?

Inspection of listed documents by the Charged Officer is a sensitive event in the disciplinary proceedings. IO is at liberty to leave it to the PO and CO. Under such a situation, it is for the Presenting Officer to get the inspection of listed documents completed. Presenting officer has to exercise great care and caution during the inspection of original documents by the Charged Officer. There have been occasions wherein the originals were destroyed during the inspection. At the same time, inspection of originals is a valuable right of the Charged Officer and the same cannot be curtailed by unwarranted and unreasonable restrictions. The following suggestions are worth considering at the time of inspection of documents:

- The Charged Officer may not be allowed to hold a pen while carrying out the inspection of the originals. A small dot or bar or a comma or a colon may change the contents of the originals enormously. As Charged Officer is entitled to take notes at the time of inspection, he may be advised to take notes with a pencil.
- Preferably give one document at a time. There may be a number of documents which will be inspected by the Charged Officer. Simultaneously handing over all the documents to the Charged Officer will have many disadvantages. It is appropriate to give the documents one after another. Once a document has been inspected, the same must be taken back and then another document may be handed over for inspection. As the Charged Officer has been supplied with the copies of the documents, he may not require to compare the contents of the originals. However, if the Charged Officer requires to simultaneously peruse two documents, the same may be allowed ensuring the safety of the documents.
- Keep the document equidistant between the Charged Officer and the Presenting Officer. This will enable the Presenting Officer to have physical control of the original document if the charged officer tries to destroy.
- Never leave the documents in the custody of the Charged Officer. It is advisable that the Presenting Officer is always present in the room throughout the inspection. In case there is an extreme emergency, the Presenting Officer may temporarily suspend the inspection, keep the documents under lock and key and request the Charged Officer to wait for a few minutes. Alternatively, depending upon the nature of the document being inspected, some reliable person may be asked to take charge of the situation temporarily.
- The Charged Officer and the Defence Assistant must be treated with utmost courtesy, when they visit the Presenting Officer for the inspection of the documents. In case there is any difference of opinion about the rights of the Charged Officer or the limitations which the Presenting Officer may impose, the matter may be referred to the Inquiry Officer rather than entering into an unpleasant debate.

13. What is the role of the PO with regard to the Additional documents and witnesses demanded by the IO?

Charged Officer is entitled to ask for the documents which may be of help in his defence. In fact, the Inquiry Officer is required to ask for the details of the documents and witnesses required for the purpose of defence. Although it is for the Inquiry Officer to decide on the relevance of the documents and witnesses cited by the Charged Officer, Presenting Officer need not be a mute spectator at this stage. Being a party to the proceedings, he has a right to express his opinion. Besides, he also has a role to assist the Inquiry Officer by way of bringing to the notice of the latter the rule position and the custodian of the document which has been cited by the Charged Officer

14. What is the role of the PO in collecting the additional documents demanded by the CO?

Often, the Inquiry Officers request the Presenting Officer to collect the documents required by the Charged Officer for the purpose of his defence. This practice is likely to vitiate the inquiry and must be strictly avoided. The documents required by the Charged Officer must reach the Inquiry Officer direct from the custodian of the documents. Collection of the documents by the Presenting Officer may result in allegation being leveled by the Charge Officer that the documents were tampered while under the custody of the Presenting Officer. If the Inquiry Officer requests the Presenting Officer to collect these documents, the latter should politely apprise the former of the problems involved. However there can be no objection to the Presenting Officer transiting these documents in sealed covers from the custodian of the documents to the Inquiry Officer.

15. What is the role of the PO in handing over the listed documents to the IO?

After the Inspection of the documents by the Charged Officer, in the next hearing, the Presenting Officer is required to hand over the listed documents to the Inquiry Officer, who will be taking over the documents and marking them as SE-1, SE-2, etc. At this stage, the Presenting Officer should pay special attention to these aspects:

The facts regarding the admission and dispute over the listed documents should be correctly brought out in the Daily Order Sheet.

The documents taken over by the Inquiry Officer are to be signed by the Presenting Officer and the Charged Officer.

Presenting Officer should ensure that the details of the documents taken over are correctly reflected in the daily Order Sheet. This alone will serve as a receipt for the documents handed over by the Presenting Officer.

16. Is the PO entitled to have copies of the additional documents demanded by the CO?

As the Charged Officer is entitled for the copies of the listed documents, the Presenting Officer is also entitled for the copies of the documents relied upon by the Charged Officer. He is also entitled to peruse the originals of these documents. These documents will be collected by the Inquiry Officer and will not be under the custody of the Charged Officer. Hence, the Presenting Officer will have to request the Inquiry Officer for the copies of these documents and the perusal of the originals.

The PO has to carefully go through the documents cited by the Charged Officer and try to anticipate as to how the Charged Officer will draw support from the same. As the Charged Officer will submit his written brief only after the submission of brief by the Presenting Officer, there is no way for the Presenting Officer to understand as to how the Charged Officer relies upon the documents for the purpose of his defence. Presenting Officer can only anticipate this and accordingly do the needful in his written brief.

17. What are the responsibilities of the PO during the Regular Hearing Stage?

During Regular Hearing, witnesses of both sides are examined. As regards the examination of the witnesses of the Disciplinary Authority, PO has the following responsibilities:

- Deciding the witnesses who may be dropped. At times Annexure IV of the Charge Sheet may contain witnesses only for the purpose of introducing the disputed documents. In case the CO did not dispute the authenticity of the documents, it may not be necessary to call such witnesses. IO may accordingly be informed. This has to be done with the approval of the Disciplinary Authority.
- Deciding as to whether any additional witness is required. This also has to be done with the approval of the Disciplinary Authority. Thereafter a request will have to be made to the IO.
- Contacting and briefing the witnesses. There is nothing unethical in contacting the witnesses in advance and informing of the proposed hearing. If the pre-recorded statement of the witnesses is available, the same may be shown to the witness also. The witness may also be informed of the likely questions during cross examinations and be advised to be ready with answers.
- Needless to add that it would be highly unethical to request or persuade or pressurise the witness to depose in any particular manner
- Arranging the attendance of the above witnesses
- Conducting the examination of the witness: Normally, examination in chief may not be in the question answer form. If a pre-recorded statement is available, the same may be read over to the witness and he/she may be

asked to confirm the same. The witness may also be asked if he/she would like to add, subtract or modify the contents of the pre-recorded statement. Otherwise, the witnesses may be asked to introduce himself/herself and then state the facts relevant to the case. PO, however, is expected to be ready with the details which are to be stated by the Witness. In case any particular information was not covered by the witness in his/her narration of the events, PO should specifically ask for the same.

- Conducting re-examination of the witnesses where necessary: PO should carefully watch and note down the likely confusions created through the cross-examination. Appropriate questions must be put during re-examination, to clear the misconceptions created through cross-examination.

18. What are the responsibilities of PO during cross examination of Defence Witnesses?

The task of cross examining the defence witnesses involves the following activities:

- ❖ Gathering the background information about the defence witnesses.
- ❖ Anticipating the deposition of the defence witnesses.
- ❖ Observing the examination in chief of the defence witnesses so as to judge the veracity of the statements, involvement/interest of the witnesses and also to object to leading questions.
- ❖ Cross examining the defence witnesses

19. What precautions are required on the part of the PO during the Regular Hearing stage?

It is said that efficient examination-in-chief, comprises in asking questions in such a way that the witness understands what answer is required; efficient cross examination comprises in asking questions in such a way that the witness does not understand what answer is required. In addition to the general skill of questioning during examination of witnesses, the PO should take the following precautions:

- a. Ensure that no leading questions are asked during examination in chief and re-examination of the State witnesses
- b. Object to the Leading questions raised by the CO or the Defence Assistant during examination or re-examination of the defence witnesses
- c. Raise objections, where necessary, during cross examination of State witnesses.
- d. Ensure that recorded statement of witness is true to the depositions and free from errors.

20. What are the activities of the PO during post hearing stage?

After the hearing is over, PO is required to submit the written brief. The purpose of the brief is to establish, by relying on the evidence produced in the inquiry that the charge stands proved.

21. What is the format for the brief of the PO?

There is no prescribed format for the brief of the PO. The following format is suggested for the purpose:

- a. Introduction
- b. Details of the charges leveled
- c. Proceedings during the Preliminary Hearing: How was inspection of documents conducted; how many documents were disputed by the CO; how many documents were taken on record by the IO and how many were to be introduced through oral evidence; what were the documents and witnesses demanded by the CO for the purpose of his/her defence.
- d. Proceedings during the regular hearings; how many witnesses were led from each side; whether any new evidence was introduced during the hearing;
- e. Opportunities given to the CO: appointment of Defence Assistant; adjournments demanded and granted; documents and oral witnesses demanded and allowed, etc.
- f. Case of the Disciplinary Authority: the Charge-facts-evidence co-relation
- g. Evidence on behalf of the Disciplinary Authority
- h. Evidence on behalf of the CO
- i. Analysis of the Evidence presented by the parties.
- j. Conclusion

22. What will happen if the PO could not attend a hearing?

In this connection, para 9.2 of Chapter XI of the Vigilance Manual 1991 Ed provides as under:

9.2 Rule 14 (14) of CCA Rules provides that the witnesses may be examined by or on behalf of the Presenting Officer. Absence of PO on any particular hearing would not necessarily imply postponement of hearing if an authorized person is present on behalf of the Presenting Officer. The substituted officer need not be formally appointed as Presenting Officer.

23. What should be the form and frequency of interaction between the PO and the Disciplinary Authority?

The presenting officer presents the case on behalf of the Disciplinary Authority. Therefore, all the actions of the PO should have the approval of the Disciplinary

Authority. PO should regularly be apprising the Disciplinary Authority about the proceedings of each hearing. Para 2.4 of Chapter XI of Vigilance Manual 1991 Ed also provides as under

2.4 The disciplinary authorities should be kept posted with the progress of oral enquiries. The Presenting Officer should send brief reports of the work done at the end of each hearing to the disciplinary authority in the prescribed proforma

PO should seek permission of IO before dropping any evidence or seeking permission of IO for introduction of any new evidence,

CHAPTER – 14

FUNCTIONS OF INQUIRY OFFICER

1. What is the basic responsibility of the Inquiry Officer?

As stated in Rule 14(2) the basic purpose of appointment of Inquiry Officer is to inquire into the truth of the imputations of misconduct or misbehavior against a Government Servant.

2. What are the various activities performed by the Inquiry Officer for the discharge of the above function?

Various activities to be performed by the Inquiry Officer may broadly be classified as under:

- a) Pre hearing stage
- b) Preliminary hearing stage
- c) Regular hearing stage
- d) Post hearing stage
- e) At any stage during the Inquiry
- f) Tackling some unusual circumstances which may arise

The details of the activities are explained under different questions in separate paragraphs hereunder

3. What are the activities to be performed by the IO during the pre-hearing stage?

- a) Verifying the appointment order and the enclosed documents
- b) Acknowledging the appointment.
- c) Preparation of the Daily Order Sheet – This will be done throughout the Inquiry
- d) Analysing and understanding the Charges
- e) Fixing the date for Preliminary Hearing
- f) Sending communication to the parties about hearing.
- g) Informing the controlling officers of Charged Officer and Presenting Officer
- h) Ascertaining as to whether the Charged Officer has finalised a Defence Assistant and if so informing the Controlling Officer of the Defence Assistant

4. What is the scope of verification of appointment order and the enclosed documents?

It is desirable that the IO scrutinizes the order appointing him as IO and the enclosed documents thoroughly. Firstly, the appointment of Inquiry Officer is required to be made by the Disciplinary Authority and no one else. When the President is the Disciplinary Authority, the order of appointment of the IO may be signed by any authority that is competent to sign communications on behalf of the President. At any rate the Order should indicate that the appointment of IO is being made by the President only. Any deviation in this regard will constitute an incurable defect in the Inquiry. The complete proceedings will be liable to be quashed if the IO had been appointed by someone other than the Disciplinary Authority.

Similarly, there may be situation wherein the charged officer, while denying the charges, might have quoted a reference number different from the one mentioned in the charge sheet. It is desirable to resolve such discrepancies at the initial stage before it becomes too late.

5. What is the position of the cases where the President is the Appointing Authority?

Under the Transaction of Business Rules, the cases are required to be approved by the Minister concerned. Clarifications were issued through Govt. of India MHA Memo No. F. 39/1/69/-Ests(A) dated 16 April 1969 that the case need not be put up to the Minister every time an order is to be issued in the name of the President. As per the above OM, once the Minister has approved initiation of disciplinary proceedings, there is no need to show the file to the Minister while issuing orders under Rule 14(2),14(4),14(5), etc. The OM however, mandated that formal orders of the Minister should be obtained at the stage of show cause notice under Rule 15 (4)(i)(b) and at the stage of issuing final orders under Rule 15 (4)(iii).

In this context it is significant to note that the Hon'ble Supreme Court in its decision dated 05 Sep 2013 in Civil Appeal No. 7761/2013 [Union of India & Ors Vs B V Gopinath] has set aside the proceedings wherein the Charge sheet was not approved by the Minister. It is for consideration as to

46. Ms. Indira Jaising also submitted that the purpose behind Article 311, Rule 14 and also the Office Order of 2005 is to ensure that only an authority that is not subordinate to the appointing authority takes disciplinary action and that rules of natural justice are complied with. According to the learned Addl. Solicitor General, the respondent is not claiming that rules of natural justice have been violated as the charge memo was not approved by the disciplinary authority. Therefore, according to the Addl. Solicitor General, the CAT as well as the High Court erred in quashing the charge sheet as no prejudice has been caused to the respondent. In our opinion, the submission of the learned Addl. Solicitor General is not factually correct. The primary submission of the respondent was that the charge sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of law. This plea of the respondent has been accepted by the CAT as

also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS(CCA) Rules which enjoins the disciplinary authority to draw up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed "definite and distinct articles of charge sheet". These proposed articles of charge would only be finalized upon approval by the disciplinary authority.

6. Can the IO take initiative for removing the deficiencies in the Charge Sheet?

IO has full liberty to bring to the notice of the Disciplinary authority any discrepancy which is of the nature of clerical or typographic mistake, i.e. patent errors which are apparent in the face of the record. In case there is any patent defect in the Charge Sheet, the I-O may bring it to the notice of the Disciplinary Authority well in time so that the defect can be cured.

In this context it is essential that IO should not take upon himself the role of refinement or reinforcement of the Charge Sheet. He should confine himself only to the patent errors in the Charge Sheet and not try to make qualitative improvement in it. Any initiative by the IO for the fortification of the charge sheet by way of including additional evidence is most likely to provide material for challenge on grounds of bias as the action of the IO is liable to be perceived as that of a prosecutor.

An illustrative list of patent errors is as under:

- (a) Typographic mistakes
- (b) Quoting wrong Rule Numbers. E.g.
 - (i) Charge sheet is being issued under Rule 15 of the CCS (CCA) Rules 1965
 - (ii) The acquisition of this immovable property was not reported to the competent authority as required under Rule 81 (2) of the CCS (Conduct) Rules 1964.
- (c) Incompatibility between the name of the Rule and its year e.g. CCS(CCA) Rule 1955
- (d) Incompatibility between the same figures mentioned in different parts of the Charge Sheet.
- (e) Names of persons or places mis-spelt in the Charge Sheet e.g. "... acquired a house at Hidurabad at a cost of Rs. 13,00,000/="

- (f) Inconsistency between the numeric and verbal description of an amount e.g. " Rs. 7,348/= (Rupees Three Thousand seven Hundred and forty eight) "
- (g) Wrong mention of the reference number and/or date of communication as well as Government instructions.

Illustrative list of errors which IO should not try to rectify is as under:

- (a) Any logical inaccuracies
- (b) Insufficiency of evidence
- (c) Vagueness of charge
- (d) Ambiguity in charge
- (e) Lack of coherence between the misconduct and the charge. E.g. Unauthorised absence is shown as lack of absolute integrity, while it would have been better described as lack of devotion to duty.

7. Is it necessary for the IO to acknowledge the appointment order?

It is a good practice for the IO to acknowledge his appointment. This will keep the Disciplinary Authority informed that the IO has taken charge of the matters and is proceeding with the task. In case the IO is not able to take up the appointment, on account of any valid reason, it is all the more important that the Disciplinary Authority is informed well in time. While a person is not expected to turn down the appointment as IO due to personal reasons, there may be circumstances wherein the IO may have to decline to act so in the interest of the case or due to organisational reasons. Such occasions should be extremely rare. But when such circumstances arise, the IO should inform the Disciplinary Authority without any delay with complete reasons

8. What is Daily Order Sheet (DOS)?

Daily Order Sheet is the record of the progress of the case handled by the IO during a day. It is prepared and maintained by the IO. While no definite format has been prescribed for the purpose, it is desirable to indicate the following in the Daily Order Sheet.

- (a) Serial No of the order
- (b) Date
- (c) Parties present
- (d) What happened [eg.: State Witness No. 3 and 4 examined, cross examined and re-examined. At the conclusion of hearing, Charged Officer intimated that he may not be able to attend hearing for two weeks because he had received message from his native place stating that his mother is not well. He accordingly requested that the next

hearing may be held after two weeks. Request has been agreed to.
Date of Next Hearing will be intimated to the parties after two weeks]

(e) Signature of the parties concerned

9. What is the importance of DOS?

It needs to be appreciated that Daily Order Sheet will be the most authentic record for ascertaining as to what happened in the course of inquiry because it is signed by all present.

Inquiring Authority should therefore pay adequate care to the accurate recording of DOS. All the opportunities granted to the PO needs to be recorded without fail because these will help in countering the allegation, if any, of inadequate opportunity raised by the Charged Officer at the later stage.

10. Are copies of the DOS supplied to all the parties concerned?

Copy of DOS must be given to the parties present and signing it. While conducting ex-parte proceedings, it would be a good practice to dispatch the copies of the DOS to the delinquent official. This action will manifest the bonafide of the authorities, in case the delinquent official alleges denial of reasonable opportunity, bias, malafide, etc.

11. When is the Daily Order sheet to be prepared?

Daily Order Sheets are to be prepared whenever there is a progress in the case – not only when hearing takes place. Thus the first Daily order sheet may be made on the day when IO received his/her appointment order. It may read as under:

Daily Order Sheet No. 1

Dated 99. Aaa.9999

Parties present: None

Received Order No. dated from appointing me as the Inquiry Authority to look into charges framed against vide Memorandum No. dated

The following papers were also received along with the Charge Sheet:

- (a) Copy of the charge sheet
- (b) Copy of the written statement of defence
- (c) Copy of order No. dated appointing Shri as Presenting Officer in the case.

An acknowledgement was sent to the Disciplinary Authority.

Sd/-
Name
Designation

12. How does the IO analyse and understand the charge?

IO has to perceive the charge sheet based on the Charge – Fact – Evidence correlation. This will help in analyzing and appreciating evidence.

This will help the IO to proceed with the task with clarity right from the initial stage

13. What are the precautions to be taken by the IO during the pre-hearing stage?

The date for the preliminary hearing must be chosen in such a way as to provide reasonable opportunity to the parties concerned. For example if the parties are posted outstation, date of hearing must be fixed so that there is adequate time for the communication to reach the parties and adequate time for the parties for undertaking the travel and reaching the venue.

14. What is preliminary hearing stage?

The phase of the hearing from the first appearance of the parties before the IO till the stage of recording of evidence is known as preliminary hearing.

15. Under what circumstances, the IO may stay the proceedings?

IO cannot stay the proceedings except under one of the under mentioned two circumstances:

- (a) When there is a stay order from the court of competent jurisdiction
- (b) When the Charged Officer has expressed lack of faith in the IO

16. What course of action is open to the IO when the Charged Officer presents an order from the Court staying the proceedings?

Under the above stated situation, the Disciplinary Authority must be promptly informed of the development, to enable the Disciplinary Authority to seek legal advice regarding scope of the order and to explore the possibility of filing appeal against the stay order. IO should not proceed with the inquiry unless the stay order is vacated by the court or the Disciplinary Authority informs, based on legal advice that the stay order does not apply to the case in question.

17. What course of action is open to the IO when the CO expresses lack of confidence on the IO?

As stated above, the IO shall stay the proceedings forthwith and inform the CO that he is at liberty to seek a change of IO as per Rules. IO should also inform the CO that the proceedings cannot be stayed indefinitely to facilitate the CO making

application for change of IO and that the CO must submit the application within a prescribed time (say one week) and submit proof thereof; else the IO is at liberty to proceed with the inquiry.

Simultaneously, the IO should apprise the Disciplinary Authority about the development and await further instructions.

18. What are the functions of the IO during the Preliminary Hearing stage?

During Preliminary Hearing, IO is required to perform the following actions:

- (a) Making arrangements for conducting the hearing
- (b) Setting the stage for smooth conduct of hearing
- (c) Asking the statutory questions
- (d) Finalisation of the question of Defence Assistant
- (e) Fixing dates for Inspection of the originals of the documents
- (f) Fixing dates for the submission of the list of additional documents and witnesses required by the CO for the purpose of his defence
- (g) Finalisation of the documents and witnesses admissible for defence
- (h) Taking action for procuring the additional documents required for the defence.
- (i) Settling the issue of disputed documents
- (j) Taking the documents on record
- (k) Issue of certificates of attendance to the parties. This will be done during regular hearing stage also.
- (l) Deciding on the requests for adjournment

19. What arrangements are to be made for conducting hearing?

Even before the arrival of the parties, the IO should ensure necessary seating arrangements for conducting hearing. Preferably, the seating arrangement should be such that both the parties will have equal access to the IO and the IO can watch and hear both the parties comfortably. At any rate, the seating arrangements should not be such as to send any signal that IO is inclined in favour of either of the parties. Besides, it is desirable that no one other than those who are required for the hearing is present in the room while the hearing is in progress. This may not always be possible and it depends upon the space provided to the IO by the organisation. However, IO should apply his mind to this aspect. Making a stenographer and a computer available for the recording the proceedings is another aspect to be attended to by the IO.

[Details regarding the remaining activities of the IO are discussed in the chapter on Conduct of Inquiry]

20. What are the activities to be performed by the IO during the regular hearing stage?

During regular hearing stage, IO will continue to prepare and issue Daily Order Sheets and certificate of attendance as was being done earlier. In addition, IO will be performing the following activities:

- a) Summoning witnesses
- b) Monitoring the conduct of the examination of witnesses
- c) Recording the statements of the witnesses
- d) Recording the demeanor of the witnesses
- e) Deciding objections about the questions raised during examination of witnesses.
- f) Deciding requests for introducing additional witnesses.
- g) Deciding requests for recalling witnesses
- h) Asking the CO to state his defence on conclusion of the case of the Disciplinary Authority.
- i) Putting the mandatory questions on conclusion of the case of the defence
- j) Checking up from the CO as to whether he got sufficient opportunity for his defence.
- k) Giving directions for the submission of the written briefs by the Presenting Officer and the CO.

21. Does the IO have power to enforce attendance of witnesses?

IO does not have power to enforce attendance of witnesses, except when an ad hoc notification in respect of the particular inquiry has been issued by the Central Government authorizing the Inquiring Authority to exercise powers specified in Section 5 of Departmental Enquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act 1972.

22. What is to be done, if a listed witness does not turn up for inquiry?

In case a Government official who has been named as a witness in a departmental proceeding fails to turn up, the matter may be reported to the higher authorities of the witnesses. Para 91 of P&T Manual provides that refusal to appear as witnesses can be construed as sufficient cause for initiating disciplinary proceedings against him.

[Details regarding the remaining activities of the IO are discussed in the chapter on Conduct of Inquiry]

23. What are the post hearing activities to be performed by the IO?

During the last hearing, the IO will fix time limit for the PO and the CO to submit their respective written briefs.

Thereafter, the IO prepares his report and submits the same to the Disciplinary Authority together with the records of the case.

24. What is the time frame within which the Inquiry is to be completed by the IO?

As per the Vigilance Manual (Ed 2005) Inquiry Report is to be submitted by the IO within six months from the date of appointment.



CHAPTER – 16

DEFENCE ASSISTANT

1. Who can be appointed as Defence Assistant?

Rule 14(8) of the CCA Rules provides for appointment of any one of the following as a Defence Assistant, subject to certain conditions:

- (a) A Government servant
- (b) Legal practitioner
- (c) Retired Government Servant

2. What are the conditions relating to appointment of a serving Government Servant as Defence Assistant?

Following are the conditions for appointment of serving Government Servant as Defence Assistant

- (a) The Government servant concerned must be posted in any office at the Headquarters of the CO or in any office where the inquiry is being held
- (b) The person so appointed must not have three pending cases:

3. Can a Government Servant under suspension be appointed as Defence Assistant?

DG P&T letter No. 201/5/75-Disc.II dated 3 Jul 1975 provides that a Government Servant under suspension can also be allowed to function as Defence Assistant. The reasoning given in support of the above decision is that merely by being under suspension, one has not ceased to be a Government Servant. The above letter refers to a decision of the Kerala High Court, without giving the details of the judgment.

4. Can the CO seek the services as Defence Assistant, of a Government Servant posted in a station other than the place of inquiry as well as the Headquarters of the CO?

Proviso to Rule 14(8) provides for appointment as Defence Assistant, a Government Servant posted at any other station, if the IO, having regard to the circumstances of the case and for reasons to be recorded in writing, so permits.

It is necessary that in either case, whether allowing or rejecting the request of the CO, the order of the IO must be a reasoned order. There is a statutory condition that reasons must be recorded while granting permission to engage a Defence Assistant from out station. Principles of natural justice require that the order rejecting the

request of the CO in this regard must be through a speaking one because it affects the prospects of reasonable opportunity of defence.

5. What further course of action is available, if the IO rejects the request of the CO for appointment as Defence Assistant, of a Government Servant posted at a station other than the Headquarters of the CO or the place where the inquiry is being held?

The CO aggrieved by the order of the IO in the matter of engaging a Defence Assistant from outstation is at liberty to make an appeal to the Disciplinary Authority as provided in DoP&T OM No. 11012/3/86-Estt (A) dated 29 Apr 1986.

6. What are conditions under which a legal practitioner may be allowed to present the case on behalf of the CO?

Legal practitioner may be allowed to function as Defence Assistant under either of the two following conditions:

- (a) Where the PO is a Legal Practitioner – under this condition, the CO has a statutory right to engage a legal practitioner as his defence assistant

or

- (b) Where the Disciplinary Authority having regard to the circumstances of the case so permits

7. What are the circumstances which may justify the appointment of a legal practitioner as defence assistant?

A non-exhaustive list of factors to be considered while examining the request of the CO for engagement of legal practitioner has been provided in DG P&T letter No. 6/8/72-Disc. I dated 29 Aug 1972:

- (a) Status of the PO
- (b) His experience in this job
- (c) Volume and nature of documentary evidence produced.

The above letter also states that the sole criterion by which the Disciplinary Authority must be guided is, whether the rejection of the request could be construed as denial of reasonable opportunity.

Subsequently, the MHA DP&AR vide its OM No. 11012/7/83-Estt.(A) dated 23 Jul 1984 has clarified that when on behalf of the Disciplinary Authority the case is being presented by the Prosecuting officer of the CBI or the Law officer (such as Legal Advisor, Junior Legal Advisor) the request deserves to be considered favourably

8. What are the restrictions on a Retired Government Servant being appointed as a Defence Assistant?

DoP&T OM No. 11012/11/2002-Estt.(A) dated 5 D}Feb 2003 provides the following conditions in the matter of appointment of a retired government as a Defence Assistant:

- (a) Should have retired from Service under the Central Government.
- (b) If the retired Government Servant happens to be a legal practitioner also, the conditions prescribed for engaging a legal practitioner as defence assistant will apply
- (c) Should not have been associated with the case in any manner in his official capacity
- (d) Cannot function as Defence Assistant in more than seven cases at any point of time.

9. When is the Defence Assistant appointed?

It is desirable that the IO informs the CO of the latter's entitlement for having the services of Defence Assistant in the first communication regarding the hearing. As soon as the CO informs the IO of the details of the Defence Assistant, the IO may write to the controlling officer of the Defence Assistant so that the latter could be spared for the first hearing it self.

Before formally allowing the person to function as Defence Assistant, O should check and satisfy himself/herself about the number of cases being handled by the defence assistant.

